DAVID M. DECLEMENT, ESQUIRE
ATTORNEY AT LAW
P.O. Box 217
55 Simpson Avenue
Pitman, New Jersey 08071

Also a member of
the Pennsylvania Bar

(856) 582-6242
Fax (856) 582-6544

863750001

January 30, 2004

Ms. Kedari Reddy
Asst. Regional Counsel
US Environmental Protection Agency
290 Broadway, 17th Floor
New York, NY 10007

RE: Kearny Smelting
Comments/Passaic River, EPA Package

Dear Ms. Reddy:

As per our recent conversation, enclosed please find a report I had generated based on the discovery provided pertaining to my client, Kearny Smelting.

I hope you can appreciate our position after your review of this document. If you are agreeable, we would like to schedule a site visit to show you our facility in reference to Frank's Creek.

Please call me to schedule the same and if additional information is needed we will try to prepare the same and deliver it at our site meeting.

Very truly yours,

DAVID M. DeCLEMENT, ESQ.
DMD/cmb
Enclosure
C: Elizabeth Butler, Remedial Project Manager, EPA
Client

amz geology
consulting geologists
43 Emery Avenue, Flemington, New Jersey 08822 (908) 788-0505

January 28, 2004

David M. DeClement, Esq
P.O. Box 217
55 Simpson Avenue
Pitman, NJ 08071

Re: Kearny Smelting
Comments on EPA Document Package

Dear Mr. DeClement:

We have reviewed the EPA documents you forwarded pertaining to Kearny Smelting's General Notice of Potential Liability. We have found nothing in the documents provided by EPA to contradict the conclusions drawn in our previous correspondence:

> [W]e find no information to indicate that KSRC ever discharged hazardous substances to Frank's Creek or the Passaic River. In our opinion, the original allegation was without basis, and has been repeatedly refuted. Furthermore, EPA has never provided any documentation supporting the original allegation.

The documents most recently provided confirm our original conclusions.

Copies of many of the EPA-supplied documents were already present in our files. One important document which we had not seen before is the NJDEP Bureau of Emergency Response Region 1 Investigation dated December 3, 1990. This report was prepared by Mr. Bruce Doyle of NJDEP. It demonstrates a significant misinterpretation of the site on the part of inspectors but also provides important agency documentation that the on-site lagoon does not drain to surface water.

Although no active filling or grading was observed, the document alleges that "land filling" was being conducted at the time of the inspection. This allegation was based entirely on appearances as demonstrated by the following passage from the report:

> From the tracks it is *apparent* that there is a land filling operation going on. Heavy equipment is present on the property and *appears* to be frequently used. The fill *appears* to be metal slag in chunks. There

> also *appears* to be a coarse ash. . . It *appears* that this filling operation has divided the pond into two smaller ponds with solid ground (land fill) in between.

The "appearance" of land filling operations was not verified by interviews with site personnel, aerial photography, or by direct observation of filling activities.

The next paragraph of the report contains a description of the "two ponds" which makes it clear that the inspectors were observing the pond and the lagoon. The strip of solid ground, which Mr. Doyle incorrectly identified as a recently created landfill, was in fact the raised bed of the Newark and Hudson Railroad which was constructed in 1871.

Further on, the report states that a memo from the "DHWM Bureau of planning assessment" (sic) indicates "that the company produces approximately 1,200 tons per year of slag waste containing 2% - 3% copper." Mr. Doyle then adds:

> While this memo indicated this slag is sold to other industries, it should be noted that this is the type of slag found in the land filling operation at the rear of the property.

There is no basis for this statement. In the first place, no analytical work was done on the slag observed in the alleged land filling area to determine its copper content. To state that it is the same "type of slag" generated by Kearny Smelting is an unfounded assumption which was never verified by testing. Secondly, it is contradicted by visual inspection of the material in question. The slag found in the "solid ground (land fill)" which separates the pond from the lagoon, is primarily a light to dark gray, vessicular material typical of iron blast furnace slag. The slag produced[1] by Kearny Smelting was dark brown to black, massive and glassy, and could be easily distinguished from the material on the railroad bed. The difference between the two materials is consistent with the development history of the site, and the fact that the material in the strip between the pond and the lagoon was placed more than seventy years before Kearny Smelting began operations.

Mr. Doyle's description of the "two ponds" is also significant because it clearly demonstrates the fact that the lagoon is entirely landlocked and does not drain to surface water. The report states:

> Also worthy of note were the two ponds. The first pond, closest to

---

[1]. In March 2000 Kearny Smelting ceased operation of the rotary furnace. Production of slag ceased at that time.

the railroad tracks, appeared to be normal. The water was clear and there was evidence of plant life and other aquatic organisms in and around it. The second pond had nothing growing in or around it. Further observation revealed the water contained some sort of suspended solid. The color was a milky white with a faint greenish hue.

As pointed out in our previous correspondence[2], the lagoon (called "the second pond" above) came into existence through the construction of railroads long before KSRC began operations. The Newark and Hudson Railroad, whose former raised bed is the northern boundary of the lagoon was built in 1871. The original railroad bed occupies the portion of the site currently designated as Tax Block 275 Lot 1B (see Attachment 1, Current Site Plan). The pond came into existence in 1905 when the Newark and Hudson Railroad built a new alignment along the current northern boundary of the Kearny Smelting site.

The Delaware Lackawanna and Western Railroad's Kingsland Cut-Off, which separates the lagoon and the pond from the marshes to the east, was built in 1926. The massive linear fill of the Cut-Off stands approximately twenty feet higher than the land on either side. The site was filled with municipal trash and industrial wastes to approximately its current topographic elevation and configuration, including the shape of the lagoon, by 1938 - six years prior to KSRC's presence on the site. Attachment 2 is a portion of a 1932 aerial photo of the site area with the current facility layout superimposed[3]. This photo shows the presence of the original Newark and Hudson railroad bed, the 1905 rerouted railroad bed, both the pond and the lagoon, the Kingsland Cut-Off, and the extent of site filling at that time.

The fact that the lagoon was completely cut off from the regional drainage is further attested to by maps and records from Hudson County Mosquito Extermination Commission, the lack of drainage making the lagoon area a "bad breeding place". It is only because the lagoon was not connected to regional surface water drainage that it could eventually be used by KSRC for a cooling water reservoir. Attachment 3 provides a labeled 1992 aerial photograph[4] of the site area which illustrates the landlocked nature of the lagoon and the physical separation of the Kearny Smelting site from Frank's Creek and the Passaic River.

---

[2]. JMZ Geology letter to David. M. DeClement, December 31, 2003.

[3]. Source: NJDEP Tidelands Management Program Aerial Photography/Historical Map Library.

[4]. Hackensack Meadowlands Development Commission, Sheet No. 29, March 1992.

The different appearance of the pond and lagoon as described by Doyle indicates that there is no direct communication between them. This is the result of the circumstances that impounded the two bodies of water. The enclosed nature of the lagoon not only made it an effective and useful on-site reservoir, it actually prevented the discharge of process related contaminants to the surface waters of the State (i.e., Frank's Creek and the Passaic River).

If you have any questions regarding the foregoing discussion please call me at your convenience.

Sincerely,

Michael McGowan
Geologist

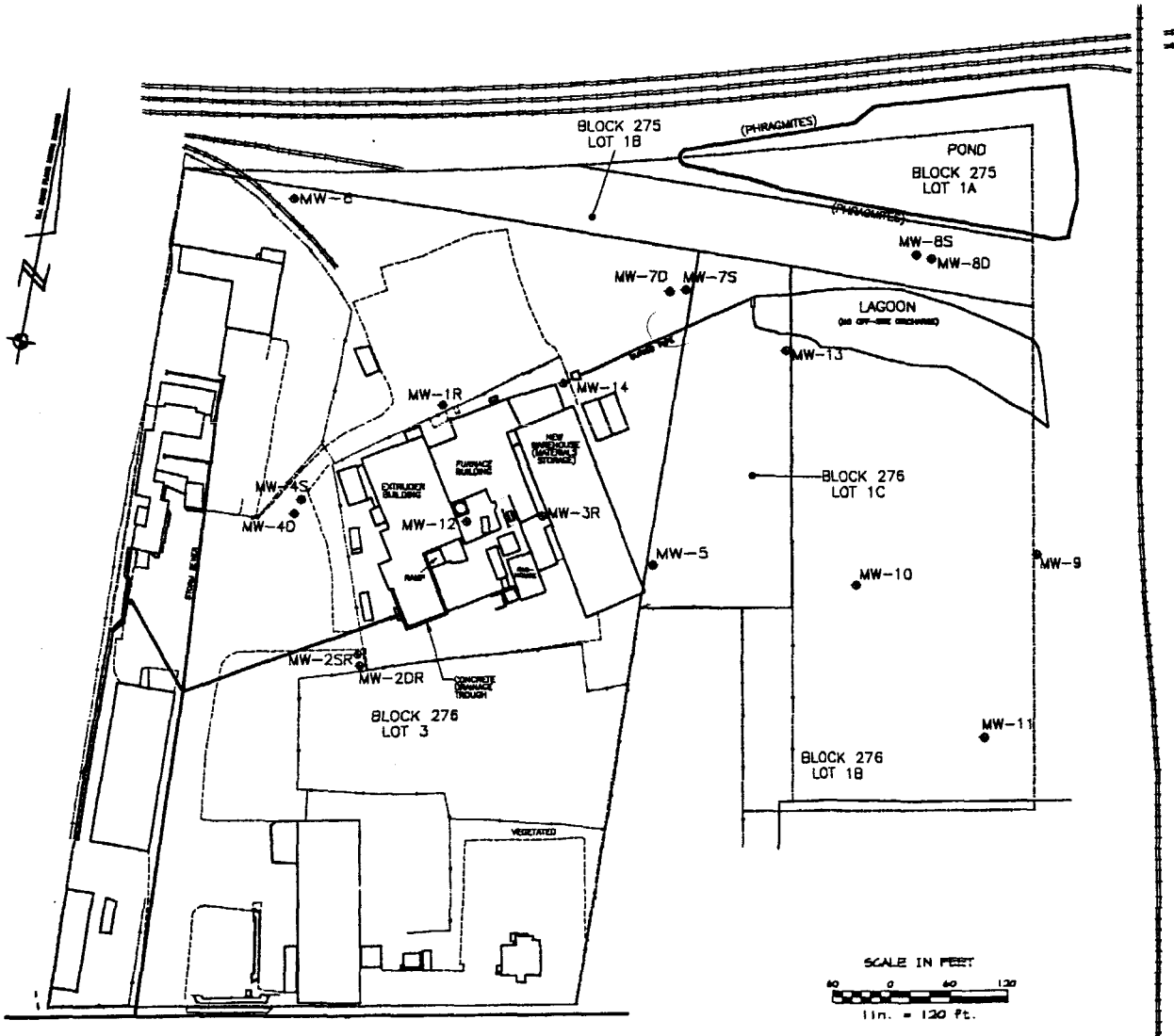
attachments 1 - 3

cc w/ attachments: Ms. Francine Rothschild

ATTACHMENT 1

Current Site Map

863750007



LEGEND

- MW-11 EXISTING MONITORING WELLS
- SITE BOUNDARY
- LOT LINES
- STORM SEWER SYSTEM
- EDGE OF PAVEMENT
- FENCE

BASE MAP BY: HENDERSON AND BODWELL, LLP, CONSULTING ENGINEERS
BOUNDARY AND TOPOGRAPHIC SURVEY OF TAX MAP LOTS 1B & 2A IN BLOCK 275
AND LOTS 1B,1C & 3 IN BLOCK 276 FOR KEARNY SMELTING AND REFINING CORP.
DWG.NO. NJ227-1050, SHEET 1 OF 1, 11/16/95

JMZ GEOLOGY	KSRC

FIGURE 2:
CURRENT SITE MAP

ATTACHMENT 2

1932 Aerial Overlay

BASE MAP BY: HENDERSON AND MCCONNELL, INC., CONSULTING ENGINEERS
BOUNDARY AND TOPOGRAPHIC SURVEY OF TAX MAP LOTS 1B & 2A IN BLOCK 275
AND LOTS 1B,1C & 3 IN BLOCK 276 FOR KEARNY SMELTING AND REFINING CORP.
DWG.NO. NJ227-10 SHEET 1

LEGEND

- BUILDINGS
- SITE BOUNDARY
- FENCE
- PAVEMENT EDGE
- SHALLOW/DEEP MONITORING WELL

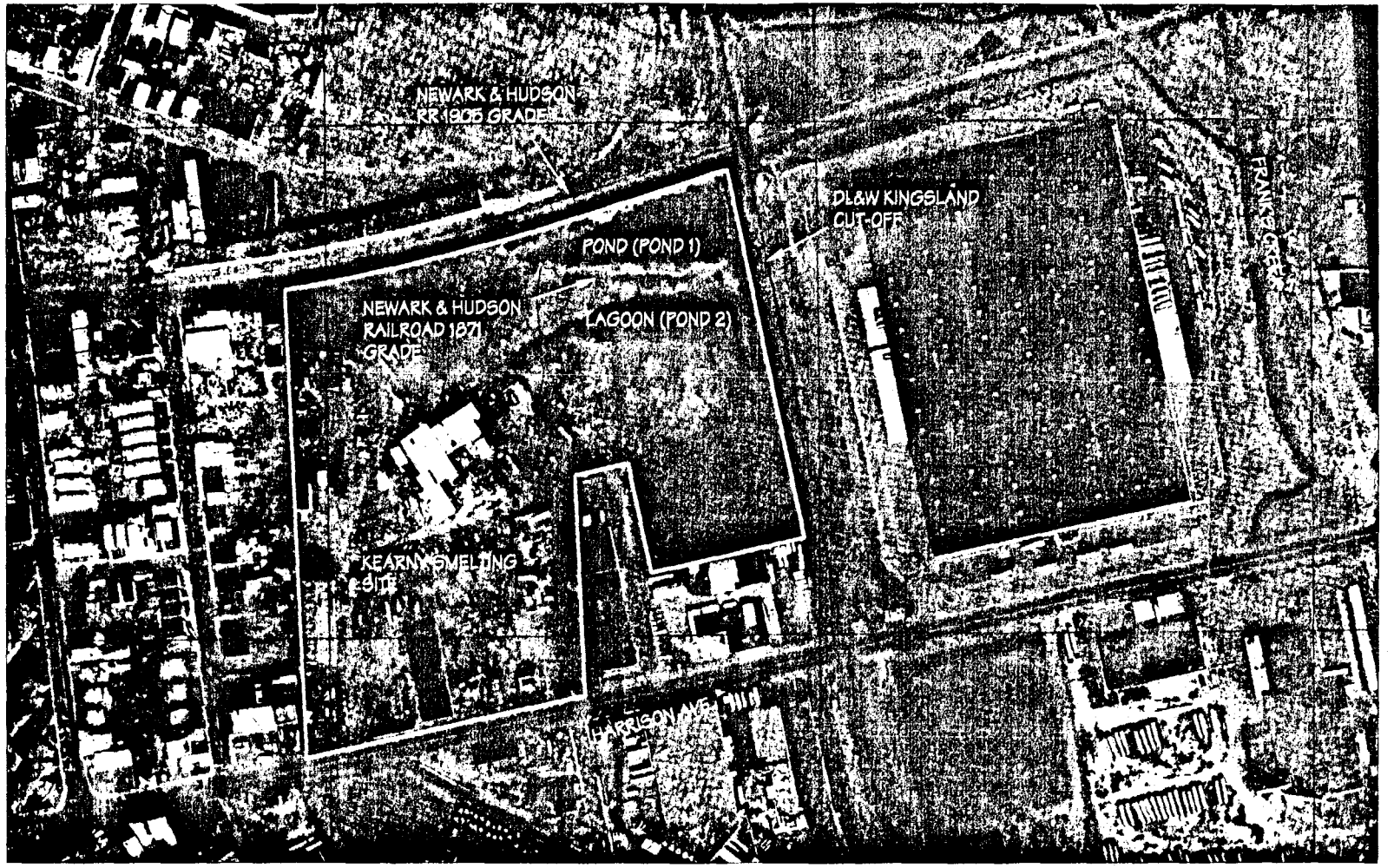
JMZ GEOLOGY	KEARNY SMELTING

1932 AERIAL OVERLAY

863750009

ATTACHMENT 3

1992 Aerial Photo



N

JMZ GEOLOGY | KSRC

1992 HMDC
AERIAL PHOTO

863750011